

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) *Conduct of discovery.* Parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the case and, in a protest, is consistent with the requirements of 6101.19(a)(3). Permissive intervenors and other persons granted limited rights of participation may be permitted rights of discovery in accordance with an order of the Board.

(e) *Discovery conference.* At any time after a case has been filed (ordinarily within 6 working days after the filing of a protest) upon request of a party or on its own initiative, the Board may hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with 6101.10.

(f) *Discovery objections.* (1) In connection with any discovery procedure, the Board, on motion or on its own initiative, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time and

place, or that the scope of discovery be limited to certain matters;

(iii) That discovery be conducted with no one present except persons designated by the Board;

(iv) That confidential information not be disclosed or that it be disclosed only in a designated way; and

(v) Such other matters as justice may require.

(2) Unless otherwise ordered by the Board, any objection to a discovery request must be filed within 2 working days after receipt in a protest, or within 15 calendar days after receipt in any other kind of case. A party shall fully respond to any discovery request to which it does not file a timely objection. The parties are required to make a good faith effort to resolve objections to discovery requests.

(3) A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(g) *Failure to make or cooperate in discovery; sanctions.* If a party fails (i) to appear for a deposition, after being served with a proper notice; (ii) to serve answers or objections to interrogatories submitted under 6101.17, after proper service of interrogatories; or (iii) to serve a written response to a request for inspection, production, and copying of any documents and things under 6101.17, the party seeking discovery may move the Board to impose appropriate sanctions under 6101.18.

(h) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provision of 6101.20.

6101.16 Depositions [Rule 16].

(a) *When depositions may be taken.* Upon request of a party, the Board may order the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths

at the place of examination. Attendance of witnesses may be compelled by subpoena as provided in 6101.20, and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may, nevertheless, arrange to have a stenographic transcription made at its own expense.

(b) *Depositions: time; place; manner of taking.* The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions propounded to him.

(c) *Use of depositions.* At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of, a public or private corporation, partnership or association, or governmental agency, which is a party, may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(i) The witness is dead;

(ii) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was pro-

cured by the party offering the deposition;

(iii) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment;

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon request and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) *Depositions pending appeal from a decision of the Board.* If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action was pending before the Board. The motion shall show:

(1) The names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(2) The reasons for perpetuating the testimony of the persons named.

If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in 6101.15 and in this section. Thereupon, the depositions may be taken and used as prescribed in this part for depositions taken in actions pending before the Board. Upon request and for good cause shown, a judge may issue or obtain a subpoena, in accordance with 6101.20, for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

6101.17 Interrogatories to parties; requests for admission; requests for documents [Rule 17].

Upon order from the Board permitting such discovery, a party may serve on another party written interrogatories, requests for admission, and requests for production of documents.

(a) *Written interrogatories.* Written interrogatories shall be answered separately in writing, signed under oath or accompanied by a declaration under penalty of perjury, and answered in a protest, within 5 working days after service, and in any other kind of case, within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.15(f)(2). An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact, but the Board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a conference has been held, or some other event has occurred.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) *Written requests for admission.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates

to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents, is to be answered in writing and signed in a protest, within 5 working days after service, and in any other kind of case, within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.15(f)(2). Otherwise, the matter therein may be deemed to be admitted.

(d) *Written requests for production of documents.* A written request for the production, inspection, and copying of any documents and things shall be answered in a protest, within 5 working days after service, and in any other kind of case, within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.15(f)(2).

(e) *Change in time for response.* Upon request of a party, or on its own initiative, the Board may prescribe a period of time other than that specified in this section.

(f) *Responses.* A party that has responded to written interrogatories, requests for admission, or requests for production of documents, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or additional documents relevant thereto, shall, as quickly as practicable, and as often as necessary, supplement its responses to the requesting party with correct and sufficient additional information and such additional documents as are necessary to give a complete and accurate response to the request.

6101.18 Sanctions and other proceedings [Rule 18].

(a) *Standards.* All parties and their representatives, attorneys, and any expert/consultant retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which an attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, and its proceedings. The Board will also look to voluntary